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IN THE

SUPREME COURT OF THE UNITED STATES

NO. 385

ATLANTIC COAST LINE RAILROAD COMPANY,
Appellant.

vs.

M. E. THOMPSON, State Revenue Commissioner of Georgia,
Appellee.

BRIEF OF APPELLEE

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ATLANTIC COAST LINE RAILROAD COMPANY,
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vs.

M. E. THOMPSON, State Revenue Commissioner of Georgia,
Appellee.

BRIEF OF APPELLEE

PART I

Statement of the Case

The Supreme Court of Georgia in a unanimous decision held that a property tax limitation granted in 1833 to the Georgia Railroad Company did not constitute an income tax exemption to the Atlantic Coast Line Railroad Company, a remote lessee of the property of its landlord, Georgia Railroad and Banking Company, on income earned by the operation of the rented property.

The income sought to be taxed by the State of Georgia was earned by the Appellant, the Atlantic Coast Line Railroad Company, through the employment of its capital, the employment of labor, expert management, a correlating of its other railroads with what is known as the Georgia Railroad, and lastly by the use of the property of the Georgia Railroad and Banking Company, which as tenant it operates.

Section XV of the Act of 1833 creating the Georgia Railroad Company relied on by Appellant as an income tax exemption contained the following:

> "The stock of said company and its branches shall be exempt from taxation for and during the term of seven years from and after the completion of said railroads and any of them; and after that shall be subject to a tax not exceeding one-half per cent per annum on the net proceeds of their investments."

From the year 1804 on up through all the years in which tax exemptions for railroads were being granted, the method of taxation in Georgia was a property tax. Corporations in any instances were taxed on the capital stock, a property tax, usually 31¼ cents per hundred. Income taxation was not known in the Georgia scheme of taxation. Therefore, when the Act of 1833 was passed, the only form of taxation of corporations in use being a property tax, it was clearly the intention of the General Assembly to limit the amount that could be levied on the "stock" (a property tax), based on the amount of the net income earned by the corporation.

In 1881 the Georgia Railroad and Banking Company leased its property to William M. Wadley, but did not specifically convey any tax exemptions to Wadley. Wadley conveyed this lease to others, and on down through a long series of subtenants the lease to one-half undivided interest in this railroad was conveyed to the Atlantic Coast Line Railroad. In none of these conveyances was any tax exemption conveyed. (T.R. 48)

In 1910, almost 30 years after the above lease was executed by the Georgia Railroad and Banking Company to William M. Wadley and possession of said road parted with, the case of Wright, Comptroller General vs. Georgia Railroad and Banking Company came on for a hearing before the United States Supreme Court, as reported in

216 U.S. 420, 30 Sup. Ct., Page 242.

In this case the Georgia Railroad and Banking Company filed its petition for injunction in the Federal Court of the

Northern District of Georgia, alleging that Wright, Comptroller General of Georgia, had issued executions for a certain franchise tax (a property tax) and was exceeding his authority as Comptroller General and prayed for injunction. This case also prayed for a declaratory judgment declaring that this corporation was subject to no other taxation except that one-half of one per cent on its net income. The State of Georgia levied no income tax at that time, was not attemping to levy any income tax. The State of Georgia was not a party in the above case because it was against Wright as an individual and the State could not be bound by the judgment therein. The Atlantic Coast Line Railroad Company was not at the time of this decision in privity with the Georgia Railroad and Banking Company because of the fact that it had been almost 30 years since the latter had granted the lease of its property to Wadley.

In 1915 the case of

> Wright, Comptroller General of Georgia vs. L. & N. Railroad and the Atlantic Coast Line Company, 236 U.S. 687 (35 S. Ct. 475)

was decided in the United States Supreme Court. This case was brought in the Federal Court by the Railroad Companies against Wright, Comptroller General, in his individual capacity similar to that brought by the Georgia Railroad and Banking Company, supra, alleging that Wright was exceeding his authority as Comptroller General and was threatening to levy tax executions for property taxes against the Railroad Companies as lessees of the Georgia Railroad.

In their petition the petitioners alleged that they were merely tenants of the property sought to be taxed and that the only right they had was the right to use this Railroad. Judge Newman, of the Northern District of Georgia, sustained this contention that these two companies were merely

tenants and had no property rights in the Railroad, only the usufruct.

In 1931 Georgia enacted the Income Tax law, a personal tax, which has been repeatedly held not to be a property tax. This Income Tax law provides for the payment by corporations of 5½ per cent of the net income from the property owned or from business done in Georgia.

The State of Georgia, through its Revenue Commissioner, having assessed the income earned by the Atlantic Coast Line Railroad Company on this particular Railroad, the Atlantic Coast Line Railroad pleaded that this income was exempt by reason of Section XV of the Act of 1833 and that this tax limitation inured to the appellant and that the assessment of the income taxes constituted an impairment of the contract entered into between the State of Georgia and the Georgia Railroad Company. The Supreme Court of Georgia in Headnote 2, held as follows:

> "2. Where as here such charter provision limits the tax on the "stock" of the corporation to ½ of 1 per cent, 'on the net proceeds of their investments', it is a property tax and constitutes no bar to the collection by the State under the 1931 income tax law as amended (Ga. L. 1931, Ex. Sess. p. 24) of an income tax from a lessee of the corporation on its net income derived from the use of the corporate property on which the charter thus limits the property tax."

PART II

SUMMARY OF ARGUMENT OF APPELLEE

1. The Supreme Court of the United States should not assume jurisdiction of this case:

   (a) Because there is no Federal question involved.

   (a-1) The evidence shows no contract for income tax exemptions between the appellant and the State of Georgia.

(a-2) Even if the Georgia Railroad and Banking Company had an income tax exemption, this would be a personal exemption and it could not transmit this exemption to appellant, and the evidence shows intent not to do so.

2. The issue involved in this case as to whether income from property exempt from property tax is exempt from income taxes has already been determined by the Supreme Court of the United States and by reason of same is too unsubstantial for this court to consider further.

3. The Supreme Court will accept the judgment of the Supreme Court of Georgia unless it is manifestly wrong.

4. The case of

Hale vs. Iowa State Board of Assessment and Review, 302 U. S. 95

controls the case at bar.

5. The appellant is bound by its pleading and judgment granted thereunder in the case of

Wright vs. L & N and the Atlantic Coast Line Railroad Company 236 U. S. 687.

6. The cases urged as res adjudicata or controlling by appellant were each and every one a case in which the issue was a property tax which includes franchise taxes, and in none were income taxes involved and because of that each has no control over the case at bar.

PART III
ARGUMENT AND AUTHORITIES

1. There is no Federal question involved.

The Supreme Court of Georgia has held that there is no contract between the State of Georgia and the appellant whereby income taxes are exempted.

In view of the fact that the Supreme Court after considering the appellant's statement of jurisdiction has merely noted "probable jurisdiction", we respectfully urge that no jurisdiction should be assumed and insist that no Federal question is involved in this case. Appellant bases its claim to the jurisdiction of this court entirely upon an impairment of a contract alleged to exist between the State of Georgia and the Atlantic Coast Line Railroad Company whereby the State has granted income tax exemption.

Nowhere in the evidence can it be shown that appellant, a remote tenant of its landlord, the Georgia Railroad and Banking Company, has any contract with the State of Georgia whereby income tax exemption has been granted to the appellant. Therefore the first thing to be considered by this court is whether the decision of the Supreme Court of Georgia was manifestly wrong in holding there is no contract for income tax exemption existing between the appellant and the State of Georgia. If there is no contract then there is no Federal question.

> "2. The Supreme Court leans toward agreement with state courts and accepts their judgment as to whether state statute impairs obligation of contract unless manifestly wrong."
>
> Hale vs. Iowa State Board of Assessment and Review
> 302 U.S. 95; 58 Sup. Ct. 102; 82 L. ed. 72.

Before the Appellant can present a Federal question as to the impairment of a contract, it must first show that it has a contract relative to taxes with the State of Georgia through which contract is entitled to tax exemption. There is no evidence to show that Appellant has a contract of any kind with the State of Georgia. Especially is there no evidence to show that Appellant has any tax exemption contract from the State of Georgia or that in so far as tax

exemption is concerned is it in privity with anyone that does have tax exemption. As a mere tenant of the property owned by the Georgia Railroad and Banking Company it has no property rights therein, and not having any property rights to be taxed it is not in privity with the Georgia Railroad and Banking Company as to any contractual rights the latter corporation might have with the State of Georgia relative to stock tax limitations.

The Supreme Court of Georgia in this case has construed that Section XV of the Act of 1833, pleaded and relied on by Appellant, constitutes no contract between the State of Georgia and Appellant, or anyone else with which Appellant is in privity, whereby Appellant is entitled to income tax exemption earned in the operation as tenant of the railroad rented from the Georgia Railroad and Banking Company. The Supreme Court of Georgia has thus construed Section XV, and its judgment should be considered by the United States Supreme Court.

Board of Directors of Chicago Theological Seminary vs. People of the State of Illinois, 188 U. S. 662, 23 Sup. Ct. Reporter 386, 388.

> "We acknowledge and affirm the principle that this court in this class of cases must decide upon its own responsibility as to the existence and meaning of the contract, but in arriving at such meaning in a case like this, the decision of the state court is entitled to exercise marked influence upon the question this court is called upon to decide, and where it cannot be said that the decision is in itself unreasonable or in violation of the plain language of the statute, we ought, in cases engendering a fair doubt, to follow the state court in its interpretation of the statutes of its own state."

2. ***Even if the Georgia Railroad Company was granted an income tax exemption by the Act of 1833 it could not transmit this exemption to appellant and appellant's evidence shows it had no intent to transmit it.***

Even if the Georgia Railroad and Banking Company had the tax exemption as to income taxes, and even though it had the power to transmit it, the lease contract dealing with this fails to so convey. And even though this exemption from income taxes was conveyed to the lessee there is no authority of law for the lessee and his assigns to transmit it on to Appellant.

The contract of Georgia Railroad and Banking Company to William M. Wadley provides as to taxes:

> "And the party of the first part also agrees to pay the taxes, which may be payable under the Charter of the party of the first part, on the rental hereinafter stipulated, or on so much thereof as may be taxable, and all taxes, if any, which may become by law collectible from the party of the first part on the shares of its stock in the hands of its shareholders. But all other taxes, which, may be payable on the property and franchises, which for the control, use or enjoyment of which, is hereby rented, farmed out, assigned or transferred to the party of the second part and his assigns shall be paid by the party of the second part and his assigns." (T.R. 51)

No income tax exemption was intended to be conveyed, or even dreamed of at the time of this lease, 1881.

The burden is on Appellant to show that the Charter authorized the Georgia Railroad and Banking Company to convey the tax immunity to others, and that there was an actual conveyance of tax immunity by said company and by the numerous assignees down to it.

The lease and all the assignment refute the claim that any immunity from income taxes was conveyed to Atlantic Coast Line Railroad Company.

Likewise the evidence introduced by it shows that the Georgia Railroad and Banking Company is itself claiming

income tax exemption on the income from the lease as shown by its tax return..(T.R. 60-65, 126, Par. 10)

It is inconceivable that the Georgia Railroad and Banking Company should be able to hold on to an income tax exemption and at the same time convey it to another.

If the conveyance of tax immunity by the Legislature must be construed strictly, it would likewise appear that a conveyance of a tax immunity from the holder of this immunity to another person would perforce of necessity be required to be construed in the same manner. The lease shows that no tax immunity from income taxes was conveyed by Georgia Railroad and Banking Company to its lessee, nor by the lessee to his assignee, nor by any of the numerous assignees on down to appellant. If such be the case, under whom does the appellant claim tax exemption? It can not claim exemption by virtute of a grant from the General Assembly. The lease shows it was not conveyed to it by the Georgia Railroad and Banking Company, and the evidence of appellant shows that it was not the intention of the Georgia Railroad and Banking Company to convey any income tax immunity to appellant but to retain this income tax immunity to itself.

We have seen that income tax is a tax personal to the corporation. If there is an exemption to the income tax, it would likewise be personal to the corporation. If personal to the corporation, then, it can not be conveyed to another person by this corporation.

The evidence shows that the one-half interest in the lease owned by Central Railroad and Banking Company was sold under order of Court and there is no conveyance of any tax immunity contained in the conveyance executed pursuant to this sale. (T. R. 44-45) Neither is there any conveyance of any tax exemption from Central Railroad

and Banking Company to the Central of Georgia Railroad Company. On this subject the United States Supreme Court in the case of

Pickard, State Comptroller
vs. East Tenn. V. & G. R. Co.
130 U. S. 637, 9 Sup. Ct. 640,

holds as follows:

> "Immunity from taxation does not pass merely by a conveyance of the 'property and franchises' of a railroad company under a judicial sale, in a suit brought by the State to enforce a statutory lien, though such company's property was held by it exempt from taxation."

We also quote from the case of

Rochester Railway Company
vs. City of Rochester
205 U. S. 236, 27 Sup. Ct. 469, 472;

> " . . . Although the obligations of such a contract of exemption are protected by the Federal Constitution from impairment by the state, the contract itself is not property, which, as such, can be transferred by the owner to another, because, being personal to him with whom it was made, it is incapable of assignment. The person with whom the contract is made by the state may continue to enjoy its benefits unmolested as long as he chooses, but there his rights end, and he cannot, by any form of conveyance, transmit the contract or its benefits to a successor. . . ."

We therefore respectfully submit there is no Federal question involved and that all the issues involved in the case at bar have already been determined by the Supreme Court of the United States and by reason of this the issues presented herein are too unsubstantial for this court to conside further.

3. The Supreme Court should accept the judgment of the Supreme Court of Georgia because it is manifestly right.

For the Supreme Court of Georgia to hold that a stock tax limitation granted to a landlord does not include an income tax exemption to a remote tenant of the property of this landlord is manifestly a correct ruling of law. It emphasizes that prevailing line of thought that all persons should be required to bear their just share of the expenses of the Government under which they exist and do business.

The decision of Georgia Supreme Court was in keeping with a long line of Georgia decisions dating back to 1832, more than a year before the charter was granted to the Georgia Railroad Company, under which appellant claims income tax exemption, as follows:

> Bank of Georgia vs. The Mayor and Alderman of Savannah (1832) Dudley 2, 130, 137.
>
> "Every man's private business, pursuit or calling, are things in which he has an interest, and many species of employment are legitimate subjects of taxation, and are taxed—still they are not, strictly speaking, property; they are the means from which income is derived, property made—but there is a clear distinction between the employment and the income or profits. Franchises are incorporeal hereditaments. From the exercise of the business authorized, and the privileges conferred, income is derived; but the money produced is not to be confounded with the operations from which it is derived."
>
> The Mayor of Savannah, v. Hartridge 8 Ga. 23
>
> "(1). Taxation, in reference to the subject matter, is divided by writers on political economy, as well as the taxlaws of all governments, into three classes—

capitation, property and income; and where one or more is treated of or acted upon, the other is never intended".

"(3). A charter, authorizing a municipal corporation to tax real and personal estate, does not, necessarily confer the right to tax income."

Featherstone vs. Norman,
170 Georgia 370, 373.

"So both the property from which the income comes, and the income itself, are subject to separation assessment for taxation. The two are separate and distinct things. The taxation of one is not the taxation of the other. The assertion that the tax on one is a tax on the other is a fanciful conceit to which we cannot agree."

We therefore urge that the rule of decisions of the Supreme Court of the United States should be followed here as is set in Headnote 6 of the case of

Dodge vs. Board of Education
302 U. S.,

"6. Though United States Supreme Court must reach independent judgment concerning existence and nature of contract allegedly created by statute, it gives great weight to views of highest court of state wherein statute was enacted."

4. The case of

Hale vs. Iowa State Board of Assessment and Review,
302 U.S. 95,

controls the case at bar.

The case at bar is even stronger than the Hale case in that the taxpayer in that case was the owner of the bonds, the income from which was sought to be taxed, while in the present case the appellant does not own the railroad from which the income was earned but merely rents this

railroad and has no property right therein.

The question in the Hale case was whether the interest upon bonds of the State of Iowa, or its political subdivisions, could be included in an assessment of a tax on the net income of the owners without detracting from *earlier exemptions in respect to taxes upon property and without an unconstitutional impairment of the obligation of a contract.*

In that case, the taxpayer, a resident of Iowa, owned Bonds issued by Iowa School Districts, Iowa Road Bonds, Iowa County Bonds and Iowa Soldiers' Bonus Bonds. At the time these bonds were issued the statute provided that such bonds "*are not to be taxed*" or "shall be exempt from taxation." At the time Iowa had no income tax, just as Georgia levied no income tax in 1833. Later Iowa imposed an income tax, just as Georgia did, and an attempt was made to tax the income derived from the interest of these bonds. The taxpayer pleaded the impairment of the obligation of the contract of exemption. The Supreme Court of Iowa upheld the assessment and *interpreted the contracts as limited to taxes laid directly upon property in proportion to its value and not as touching taxes in the nature of an exercise on the net income of the owner.*

This case was carried to the United States Supreme Court by appeal. For the convenience of the Court, we quote the material headnotes of this case and also portions of the opinion:

"4. Grants of immunity from taxation, in derogation of sovereign power of the State, are strictly construed.

"5. Even if Iowa statute exemption bonds of State of Iowa and its political subdivisions from taxation created a contract, determination of Supreme Court of Iowa that contract was limited to taxes laid directly upon property in

proportion to its value, and did not include taxes in nature of an excise upon net income of an owner, was not unreasonable (Code Iowa 1935, Sections 4753-a13, 4753-a14, 6943-f4 et. seq. 6944(5), 6944(22), 6953, 7171; Const. U. S. Art. 1, Section 10).

"6. Even if Iowa statute exempting bonds of Iowa and its political subdivisions from taxation created a contract, interest on such bonds could be included in assessment of tax on net income of owners of bonds without an unconstitutional impairment of obligation of contract (Coda Iowa 1935), sections 4753-a13, 4753-a14, 6943-f4 et seq. 6944 (5), 6944 (22), 6953, 7171; Const. & S. Art. 1, Section 10)."

We quote from the opinion:

> " . . . Many, perhaps most, courts hold that a net income tax is to be classified as an excise. 'The tax levied on income is not a property tax, but it is a percentage laid on the amount which a man receives, irrespective of whether he spends it, wastes it, or invests it.' Featherstone vs. Norman, 170 Ga. 370, 382, 153 S. E. 58, 65, 70 A.L.R. 449; Purnell vs. Page, 133 N. C. 125, 129, 45 S. E. 534." . . .

We again quote from the opinion:

> "The taxpayer in People ex. rel. Clyde vs. Gilchrist (262 U. S. 94) claimed the benefit of an exemption under a statute of New York to the effect that, upon payment of a recording tax, debts and obligations secured by mortgages of real property should be exempt from other taxation by the State and local subdivisions. The question was whether the exemption thus accorded was applicable to income tax enacted long afterwards. The State court ruled against the taxpayer (People ex rel. Central Union Trust Co. vs. Wendell, 197 App. Div. 131, 188 N. Y. S. 344; People ex rel. Clyde vs. Wendell, 197 App. Div. 913,

187 N. Y. S. 949; Id., 232 N. Y. 550, 134 N. E. 567), assuming the existence of a contract of exemption, but holding that it was not intended to apply to taxes upon income. *This court considering the fact that at the date of the exemption statute 'no one thought of an income tax,' and recalling that 'any contract of exemption must be shown to have been indisputably within the intention of the Legislature,'* sustained the judgment of the state court 'The conclusion does not seem to us very difficult to reach." . . . (Emphasis supplied)

"The controversy in New York ex rel. Cohn vs. Graves, (300 U. S. 308, 47 S. Ct. 466), decided at the last term, evoked a ruling by this court that a State tax upon net income which included rents derived from land in another state was not equivalent to a property tax imposed upon the land itself. 'The incidence of a tax on income differs from that of a tax on property. Neither tax is dependent upon the possession by the taxpayer of the subject of the other. His income may be taxed, although he owns no property, and his property may be taxed, although it produces no income." . . .

This line of thought was also followed in the case of:

United States Trust Co. vs. Helvering, Com'r
307 U. S. 57, 59 S. C. 692

Here an exemption from the estate tax was denied the administrator of a World War Veteran.

In the case of

J. D. Adams Manufacturing Company
vs. Storen, 304 U. S. 307, 58 Sup. Ct. 915,

the same question came up relative to income tax on property exempt from property tax. The court ruled that the case of Hale vs. Iowa State Board, 302 U. S. 95, controlled in this case.

In the case of

Silas Mason Company vs. Tax Commissioner

of the State of Washington,
302 U. S. 186, 69 Sup. Ct. 233,

the court held that a gross income tax levied by the State of Washington would apply to construction contracts with the United States.

Again in the case of

Atkinson vs. Tax Commissioner of Oregon,
302 U. S., 58 Sup. Ct. 419,

the court held that the Oregon personal income tax would apply to the net income derived from the construction of a dam within such state with a contract with the United States.

Still again in

Helvering vs. Bankline Oil Company,
303 U. S. 62, 58 Sup. Ct. 616,

the court held that the holder of a lease from a state of oil and gas tide lands is subject to Federal income tax upon the profits of its operations and is not exempt on the ground that such tax is an unconstitutional burden upon a state instrumentality.

Again in the case of

Helvering vs. Mountain Producers Corp.,
302 U. S. 376, 58 Sup. Ct. 623,

the income was received by a lessee under a lease from the state and the court held it was not exempt from income tax on the theory that the recipient of the income tax is a state instrumentality.

Again in the case of

New York Rapid Transit Corporation vs.
State of New York,
303 U. S. 573, 58 Sup. Ct. 721,

there was an attempt to plead a contract not to lay any new taxes upon the corporation. The court held against the alleged exemption, holding that

> "where one relies upon exemption from taxation, both the power to exempt and the contract of exemption must be clear. Any doubt or ambiguity must be resolved in favor of the people."

The court also used the following language applicable to the case at bar:

> "Where the intention was to prevent the imposition of any new taxes, adequate language was available."

It will be noted that in all the foregoing cases the United States Supreme Court completely reversed the trend of former decisions relative to tax exemptions and overruled either specifically or by implication all those decisions contrary to this new line of thought. Since that time the United States Supreme Court has held to this theory that all should bear heir part of the burdens incident to the maintenance of our government. The case of

Graves vs. New York,
306 U. S. 466, 59 Sup. Ct. 595,

followed this same trend. In that case an exemption from income tax by the State of New York on the salary of an employee of the Home Owners Loan Corporation was claimed. The court used the following forceful language:

> "(8) The present tax is a non-discriminatory tax on income applied to salaries at a specified rate. It is not in form or substance a tax upon the Home Owners' Loan Corporation or its property or income, nor is it paid by the corporation or the government from their funds. It is measured by income which becomes the property of the taxpayer when received as compensation for his services; and the tax laid

upon the privilege of receiving it is paid from the private funds and not from the funds of the government, either directly or indirectly. *The theory, which once won a qualified approval, that a tax on income is legally or economically a tax on its source is no longer tenable.* . . ." (Emphasis supplied)

5. The appellant is bound by its pleadings and judgment granted thereunder in the case of

Wright vs. L & N and the Atlantic Coast Line Railroad Company
236 U. S. 687

In the petition in that case appellant set up the fact that it was a mere tenant of this particular railroad and had no property rights whatsoever therein and that the ½ of one percent on the income was a property tax. From this sworn petition we quote:

"14. Your orators have no such right, title, interest or estate in the property assessed against your orators as aforesaid, as makes your orators liable for taxes thereon. All of said property is now and ever has been since its creation the sole property of your orator's lessor, the Georgia Railroad and Banking Company, which company alone is liable for such tax as may be lawfully imposed on said property. Your orators are merely the tenants of said property for a term of years, which may be the happening of contingencies expressly stated in the instrument of lease, come to an end at any time prior to the expiration of the term limited in the lease.

"15. Said lessor, The Georgia Railroad and Banking Company has never parted with its right, title and estate in said property or sought to do so. . . ."

"17. Your orators do not claim that the property covered by the charter of The Georgia Railroad and Banking Company, which has been assessed by the defendant as per Exhibit B, is exempt from taxation.

> On the contrary, your orators aver that it is taxable, but in accordance with a special scheme of taxation enacted by the wisdom of the legislature, dealing at that date with the economic conditions and governmental problems of the day. It was never the purpose of the legislature to relieve that company from all taxation, but to encourage an untried enterprise of great benefit, if successful, to the state. In pursuance of that purpose, the legislature devised a system of taxation for the enterprise which it desired to foster. The principle, therefore, that immunity from taxation granted to a corporation will not pass by a sale to another person of the corporation's property and franchises has no application in this case." . . . (T. R. 116, 117)

It appears this same appellant in the foregoing case went to considerable lengths in order to establish the fact that it was a mere tenant and that the Georgia Railroad and Banking Company was the landlord.

Not only did the present appellant swear to the foregoing, but on these pleadings obtained the following judgment from Judge Newman of the District Court, which was affirmed by the highest court of the land to the effect that it was not liable for the property tax because of the fact that it was a mere tenant and under the lease had nothing to exempt.

> "1. That the lease executed by the Georgia Railroad and Banking Company to William M. Wadley exhibited to the bill of complaint in this case, of which the complainant or assignee under said Wadley, created a relationship of landlord and tenant between the parties thereto and did not vest in said lessee any estate, but only usufruct, which is not subject to be taxed, and that the property covered thereby had its renewals, alterations and betterments made by the lessees is not subject to ad valorem taxation". (T. R. 121)

Appellant invoked the above decision and ought to be

bound by it. Its petition pleaded this and the court sustained its pleadings. This decision holding there was no property right conveyed by the lease. Any exemption from taxation would be a property right.

Lynch vs. U.S.
292 U. S. 571, 54 Sup. Ct. 840.

Appellant's contentions in the case at bar are diametrically opposed to its contentions in that decided in the 236th U. S. set out above. *In that case it was attempting to escape a property tax; it established the fact that Section XV of the Act of* 1833 *was a property tax and that the Georgia Railroad and Banking Company had paid this tax. In the case at bar it is attempting to escape an income tax; Section XV, therefore, metamorphoses into an income tax.*

In the present case it bases its claim of exemption on the theory that immunity from taxation passed from the Georgia Railroad and Banking Company to the Atlantic Coast Line Railroad Company. In its case in the 236th U. S. its pleadings show no tax immunity passed:

> "17. . . . The principle, therefore, that immunity from taxation granted to a corporation will not pass by a sale to another person of the corporation's property and franchises has no application in this case. . . ."

THE INCONSISTENCY OF THE EVIDENCE INTRODUCED BY APPELLANT AND THE ARGUMENT OF ITS COUNSEL

We call attention to the following statements in appellant's brief, page 31, VII:

> "The charter tax is not a property tax. It is an income tax."

Page 35, VIII:

> . . . . . There is no rule for the interpretation of the

Supreme Court of Georgia that the charter tax was a property tax."

The inconsistency between the evidence offered by appellant which sets out in no uncertain terms that the tax provided in the charter is a property tax and the above argument which is directly opposite to such evidence is so striking that we ask the court to consider it. We are unable to reconcile the difference in the argument and the evidence introduced by appellant in the above Atlantic Coast Line case in which appellant was a party and pleaded this was a property tax and obtained a judgment to this effect. We especially call attention to the following extract from paragraph 17 of its petition therein:

". . . . your orators aver that it(railroad property) is taxable but in accordance with its special scheme of taxation enacted by the wisdom of the legislature."

6. The cases urged as res adjudicata or controlling by appellant were each and every one a case in which the issue was a property tax which includes franchise taxes, and in none were income taxes involved and because of that each has no control over the case at bar.

Appellant's brief on page 12 and 13 cites numerous cases which is claimed to control the case at bar. However, a careful examination of each one shows unmistakably that they have no bearing on the question as to whether income earned by appellant in the operation of this road is exempt, because that issue was never presented to the courts in either of these cases.

Each of these cases involved the question as to whether the property of the Georgia Railroad and Banking Company and property of railroads having similar tax exemption provisions, including franchises, was taxable, franchises being

property and an element of "stock" and a franchise tax being a property tax and the decision of the court was in each instance that the property was either not subject to an ad valorem tax, or was not subject to a franchise tax, as was in each of these cases attempted to be levied by the State of Georgia. The courts in these cases was construing the meaning of the word "*stock*", and determining whether either the owners or the lessees of these railroads were subject to either ad valorem or a franchise tax on that item of property which was included in the term "stock".

At the time they were decided the State of Georgia had not even enacted the income tax act of 1931, and the court could not possibly have had in mind any question of income tax, as provided by the present income tax laws of Georgia. Also that in the case of 216 U. S. 420, the Georgia Railroad and Banking Company pleaded as res adjudicata the first named case above, but the Supreme Court of the United States refused to treat it as res adjudicata.

It will be noted that at the time the decision was rendered in the 216 U. S., the Supreme Court of the United States was following a line of decisions to the effect that the income from tax exempt property was likewise exempt. Its ruling in that case was based on this theory. We quote from the opinion:

" . . . A tax upon earnings is a tax which at last covers and includes, unless double taxation is intended, all property necessarily held and used to make that income, including the enjoyment of its franchises. . . ."

As has been seen in the Hale case, and others, the above ruling has been overruled and is no longer followed.

In all the cases set out above it will be seen that whenever any of the above railroad companies were attempting to escape a property tax, the tax limitation in their respec-

tive charters immediately became a property tax, and the lessees of the property having nothing to tax, so it was not necessary for immunity from taxation to pass from the lessor to the lessee. As an illustration of this, in view of the fact that the Supreme Court of the United States will take cognizance of its own records, we call attention to the transcript of the record in the case of Central of Georgia Railway Company vs. Wright in the 248 U. S. and 250 U. S. above. We quote from paragraph 27 of the petition of said company, as set out on page 21 of the printed transcript of record:

> "27. The tax provisions of the charter of Augusta & Savannah Railroad and of Southwestern Railroad Company are both irrepealable and inviolable contracts with the State of Georgia. The said charter tax provisions do not constitute tax exemptions, but on the contrary provide for the taxation of said railroad properties. The said tax provisions specify the manner and the rate of taxation of said properties. It is expressly provided in said charters that said railroad properties shall not be subject to be taxed higher than one half of one per cent of their income. These provisions are mandatory and exclusive. It was intended that when said railroad properties were taxed in accordance with their charters such taxation would be exclusive of all other taxation of said property. *The tax imposed under the charter provisions relates to the specific railroad properties themselves; the provision of the charters is not that said corporations shall be taxed on their income, but that the specific railroad shall not be subject to be taxed higher than one half of one per cent on its income.*" . . . (Emphasis added)

These cases are not controlling in the case at bar for the additional reason as was held in the case of

> Wright vs. Georgia Railroad and Banking Company
> 216 U. S. 420

wherein the Georgia Railroad and Banking Company pleaded as res adjudicata the case of Georgia vs. Georgia Railroad and Banking Company 5[illegible] Ga. 423.

As to this plea the Supreme Court of the United States says:

> "But in Georgia R. & Bkg. Co. vs. Wright, 124 Ga. 596, 53 S.E. 251, the Supreme Court of Georgia seems to have definitely decided that a judgment in a suit to collect a tax assessed for one year is not a bar to a suit for taxes subsequently assessed for another year, although the question decided in the first case is the same question upon which the second suit must be also decided.
>
> "This court, as is well settled, accords to a judgment of a state only that effect given to it by the court of the state in which it was rendered. Union & Planters' Bank vs. Memphis, 189 U.S. 71, 47 L. ed. 712, 23 Sup. Ct. Rep. 604; Covington vs. First Nat. Bank, 198 U.S. 100, 49 L. ed. 963, 25 Sup. Ct. Rep. 562."
>
> "We shall therefore disregard this plea, and determine the matter upon its merits, giving to the decision of the Georgia court consideration only as an authority."

Although the record in the case of

> Wright vs. Central of Georgia Railroad Company
> 236 U. S. 674

is not in the record but the record of that case being in the records of the United States Supreme Court, it is a notable fact that the pleadings and judgment in that case show striking similarity to that of the case of

> Wright vs. L & N and the Atlantic Coast Line
> Railroad Company
> 236 U. S. 687.

the issues and the judgment being almost identical.

We call attention to the fact that in both the case of Wright vs. L. & N. and the Atlantic Coast Line Railroad Case, 236 U. S. 687, and that of Wright vs. Central of Georgia Railway Company U. S. 674, each decision was a five Judge one.

We quote from the vigorous dissent of Mr. Justice Hughes in the Central of Georgia case:

> "It has repeatedly been declared by this court to be settled law that tax exemptions, or *tax limitations*, are personal to the grantee; that is, nontransferable, and do not run with the property unless the legislature has explicitly provided otherwise. It has been held not to be enough that the grantee is authorized to make a conveyance of all its property, estate, privileges, and franchises."

citing numerous cases.

Again we call attention to the case of Central of Georgia Railway Company vs. Wright, 250 U. S. 519, which was also a five Judge decision.

IN CONCLUSION

Regardless of what dicta the courts may have used in the decisions cited by appellant in determining issues which did not include the issue of whether the State of Georgia could levy income tax against these corporations, the inescapable fact remains that a stock tax and an income tax are two separate and distinct taxes and an exemption or limitation of one is not an exemption of the other.

> "The stock . . . . shall be subject to a tax not exceeding one half of one percent. per annum on the net profits of their investments."

In view of the foregoing, we respectfully urge that the Appellant has shown no valid reasons to support its contention that the unanimous judgment of the Supreme Court

of Georgia is manifestly wrong and that it should be overruled. But on the contrary we think that Appellant's own argument and the cases it has cited demonstrate forcefully that the judgment of the Supreme Court of Georgia is manifestly right and should be affirmed by the Supreme Court of the United States.

Respectfully submitted.

EUGENE COOK,
Attorney General

VICTOR DAVIDSON,
Ass't. Atty. General

C. E. GREGORY, JR.,
Ass't. Atty. General

CLAUD SHAW,
Ass't. Atty. General

I, Victor Davidson, Assistant Attorney General of Georgia, certify that I have this day served Counsel for Appellant with copy of the foregoing brief by mailing same to T. M. Cunningham, Savannah, Georgia, Philip H. Alston, Atlanta, Georgia, and to Carl H. Davis, Wilmington, North Carolina.

This 11 day of January, 1947.

VICTOR DAVIDSON,
Assistant Attorney General.

FILE COPY

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1946

No. 385

ATLANTIC COAST LINE RAILROAD COMPANY,

Appellant,

vs.

M. E. THOMPSON, STATE REVENUE COMMISSIONER,

Appellee.

No substitute

TO THE SUPREME COURT OF THE UNITED STATES:

The petition of Atlantic Coast Line Railroad Company, Appellant in the above stated case, respectfully shows:

1. Appellee, M. E. Thompson, State Revenue Commissioner became Lieutenant Governor, and qualified as such January 20, 1947, and, therefore, holds no longer the office of State Revenue Commissioner.

2. Article V, Section I, Paragraph IV, of the Constitution of 1945 of the State of Georgia provides that the General Assembly shall convene and open and publish returns for the election of Governor; "and the person having the majority of the whole number of

votes, shall be declared duly elected Governor of this State; but, if no person shall have such majority, then from the two persons having the highest number of votes, who shall be in life, and shall not decline an election at the time appointed for the General Assembly to elect, the General Assembly shall immediately, elect a Governor viva voce; and in all cases of election of a Governor by the General Assembly, a majority of the members present shall be necessary to a choice".

At the election for Governor held in November 1946, Honorable Eugene Talmadge received a majority of the whole number of votes cast at said election. However, he died before the General Assembly convened and opened and published the returns of the election. The General Assembly, upon opening and publishing the returns, declared that no person had received a majority of all the votes at said election; presumably on the theory that Honorable Eugene Talmadge being dead, he was no longer a person. There were two other persons voted for in said election besides Honorable Eugene Talmadge, one of them being his son, Herman Talmadge. The General Assembly thereupon elected by viva voce vote Herman Talmadge as Governor.

3. Article V, Section I, Paragraph I, of the Constitution of 1945 of Georgia, provides:

> "The executive power shall be vested in a Governor, who shall hold his office during the term of four years, and until his successor shall be chosen and qualified. The Governor serving at the time of the adoption of this constitution and future Governors shall not be eligible to

succeed themselves and shall not be eligible to hold the office until after the expiration of four years from the conclusion of his term of office."

Honorable Ellis Arnall, the retiring Governor, claiming that his successor had not been lawfully chosen and qualified, claimed the right to hold over as Governor. The Legislature duly declared M. E. Thompson elected as Lieutenant Governor. Article V, Section I, Paragraph VII, of the Constitution of the State of Georgia of 1945, provides "In case of the death, resignation, or disability of the Governor, the Lieutenant Governor shall exercise the executive power and receive the compensation of the Governor until the next general election for members of the General Assembly, at which a successor to the Governor shall be elected for the unexpired term."

Honorable Ellis Arnall resigned as Governor as soon as Honorable M. E. Thompson was declared the elected Lieutenant Governor. M. E. Thompson now claims that he has the right to exercise the executive power under the provision of the Constitution last above quoted.

4. Under the provisions of Section 92-8402 of the Annotated Code of Georgia, the State Revenue Commissioner is appointed by the Governor with the consent of the Senate, and his bond must be approved by the Attorney General. Honorable Herman Talmadge, claiming to be the legally elected Governor, has appointed Charles D. Redwine as State Revenue Commissioner, and his appointment has been approved by the Senate, and his bond has been approved by the Attorney General. Honorable M. E. Thompson,

claiming to be the acting Governor, has appointed Stonewall H. Dyer as State Revenue Commissioner, and his bond has been approved by the Attorney General, but the Senate has not consented to his appointment. The question as to who is the Governor of Georgia is now being litigated in the Courts, and the probability is that some time will elapse before that question is finally determined by the Supreme Court of Georgia.

5. The Legislature of the State of Georgia has provided by an act approved March 27, 1941, (Acts 1941; p. 516; Code Section 89-906, et seq. of the Annotated Code of Georgia of 1933), "That when any suit shall have been commenced by or against a public officer of this State in his official capacity and relating to the present and continuing duties of such office, the same shall in the event of the death, resignation, removal or expiration of the term of such officer while the suit is pending in the trial court and courts of review, survive in favor of or against his successors in office." A copy of the said Act of March 27, 1941, is hereto attached, marked Appendix "A".

6. This case involves the assessment of a deficiency tax under the Income Tax Law of Georgia. Code Section 92-3302 provides that the assessments of such deficiencies shall be made by the State Revenue Commissioner. The State Revenue Commissioner is charged with the administration and supervision of all the tax laws of the State. (Code Section 92-8427). The taxpayer has a right to protest the assessment under the provisions of Code Section 92-8432 and in the event the State Revenue Commissioner overrules the protest, the taxpayer has the right to appeal to the

Superior Courts of the State. (Code Sections 92-8426 (d); 92-8446). The Appellant in this case proceeded under the provisions of these Code Sections and appealed the assessment to the Superior Court of Chatham County, Georgia.

7. This Court also has power of substitution under the provisions of U.S.C.A., Title 28, Section 780, and Rule 19 of the Supreme Court of the United States.

8. Appellant cannot tell which of the two claimants to the office of State Revenue Commissioner is entitled to the office, and this question may not be settled before the argument of this case or before the decision of this case by the Court.

WHEREFORE, Appellant prays that both Charles D. Redwine, as State Revenue Commissioner, and Stonewall H. Dyer, as State Revenue Commissioner, may be now substituted in this case as Appellees in the place of Appellee, M. E. Thompson, as State Revenue Commissioner; and that when it shall be finally determined which of the two is lawfully entitled to the office of State Revenue Commissioner that the other may be stricken as Appellee.

This 11 day of February, 1947.

CARL H. DAVIS,

PHILIP H. ALSTON,

T. M. CUNNINGHAM,

Attorneys Atlantic Coast Line Railroad Company, Appellant.

I hereby certify that the facts stated in the foregoing petition are true and that a copy of this petition has been served on both Charles D. Redwine and Stonewall H. Dyer. This 12 day of February, 1947.

T. M. CUNNINGHAM.

Appendix "A"

"An Act to provide for the survival of suits commenced by or against public officers in their official capacity in favor of or against their successors in office in the event of death, removal, resignation or expiration of the term of such officers; to provide the procedure in such case; to provide that the provisions of this Act shall apply to pending litigation; to restrict the application of this Act; and for other purposes.

Be it enacted by the General Assembly of Georgia and it is hereby enacted by authority of the same:

Section 1. That when any suit shall have been commenced by or against a public officer of this State in his official capacity and relating to the present and continuing duties of such office, the same shall in the event of the death, resignation, removal or expiration of the term of such officer while the suit is pending in the trial court and courts of review, survive in favor of or against his successors in office.

Section 2. In such event the successor in office shall be made a party upon motion either in term time or vacation in whatever court the case shall be pending at the time, of which he shall be given reasonable notice. When the successor shall have been made a party in accordance with this act, the case shall thereupon proceed as if no change of parties had been made, provided that it shall be within the discretion of the court to allow the successor in office such time as he may deem necessary to appear, plead or otherwise proceed with such case.

Section 3. The provision of this Act shall apply to suits pending on the date of its approval, including all such actions that have not been formally dismissed even though the death, removal, resignation or expiration of the term of such public officer may have occurred prior to the date of the approval of this Act.

Section 4. The provisions of this Act shall not apply to actions against officers for damages on account of tortious acts committed by such officer colore officii, which survives against such officer or his personal representatives, notwithstanding the death, resignation, removal or expiration of the term of such officer.

Section 5. The provisions of this Act shall relate only to suits commenced by or against State officers in their official capacity and shall not relate or apply to suits commenced by or against municipal, district, or county officers.

Section 6. All laws and parts of laws in conflict with this Act be and the same are hereby repealed.

Approved March 27, 1941."

(Acts 1941, p. 516).

SUPREME COURT OF THE UNITED STATES

No. 385.—October Term, 1946.

Atlantic Coast Line Railroad Company, Appellant, v. Glenn S. Phillips, State Revenue Commissioner of the State of Georgia.	Appeal from the Supreme Court of the State of Georgia.

[June 23, 1947.]

Mr. Justice Frankfurter delivered the opinion of the Court.

This was a proceeding in the courts of Georgia to declare invalid an assessment by the State Revenue Commissioner against the Atlantic Coastline Railroad Company on the ground that the tax as applied to the appellant impairs the obligation of contracts. United States Constitution, Art. I, Sec. 10.

To encourage railroad development, the State of Georgia in 1833 chartered the Georgia Railroad Company (which later became the Georgia Railroad and Banking Company), and gave the railroad certain immunity from taxation. Georgia's increasing need of tapping new sources of revenue has not unnaturally brought to the courts the scope of this immunity. Its construction in relation to the claim of Georgia that despite the charter of 1833 the appellant is subject to its corporate income tax is the sole issue before us.

The case is this. Georgia, in 1931, imposed a tax of 5½ percent on the net income of all domestic and foreign corporations. Acts 1931, Extra. Sess. pp. 24, 26, amended, Acts 1937, pp. 109, 117; Ga. Ann. Code § 92-3102. No claim under this corporate income tax was made against the Atlantic Coast Line, one of the lessees of the Georgia Railroad, until 1941. For the calendar years 1941, 1942, 1943, the State Revenue Commissioner assessed against

the appellant deficiency taxes on the basis of its net income from the road, computed at the 5½ percent rate paid by all corporations. It is this assessment that is contested. The appellant resisted on the ground that the attempt of Georgia to impose this tax is in disregard of the obligation assumed by Georgia through § 15 of the Charter of 1833. The Supreme Court of Georgia sustained the assessment, 38 S. E. 2d 774, by finding that the tax exemption of the charter related merely to the limits to which a tax on the railroad property could be levied; such a property tax to be measured so as not to exceed one-half percent of the net earning power of the properties. The exemption, so the State Supreme Court found, was not concerned with what we now know as a corporate net income tax and therefore did not bargain away the power of the legislature to impose such a tax.

A claim that a State statute impairs the obligation of contract is an appeal to the United States Constitution, and cannot be foreclosed by a State court's determination whether there was a contract or what were its obligations. But while it is true that we should not be bound by the construction of local statutes by the local courts in deciding the Constitutional question "yet when we are dealing with a matter of local policy, like a system of taxation, we should be slow to depart from their judgment, if there was no real oppression or manifest wrong in the result." *Clyde* v. *Gilchrist*, 262 U. S. 94, 97.

The Georgia Supreme Court had to construe the following Georgia language:

> "The stock of said company and its branches shall be exempt from taxation for and during the term of seven years from and after the completion of said rail roads or any one of them; and after that, shall be subject to a tax not exceeding one half per cent. per annum on the net proceeds of their investments." § 15, Act of December 21, 1833, Acts 1833, p. 256, 263–64.

It is not for us to read such a local law with independent but innocent eyes, heedless of a construction placed upon it by the local court. Such a tax provision is not a collocation of abstract words. In seeking the meaning conveyed by a local enactment it must be viewed as part of the whole texture of local laws and of the economy to which they apply. The language draws to itself presuppositions not always articulated, and even what is expressed in words may carry meaning to insiders which is not within the sure discernment of those viewing the law from a distance. And so we are not prepared to say that the Supreme Court of Georgia was "manifestly wrong," *Hale* v. *State Board*, 302 U. S. 95, 101, in construing the exemption as limiting merely the right to impose property taxes. Our search is for something other than the meaning which the tax specialists may today find in the words. "It is for the meaning that at a particular time and place and in the setting of a particular statute might reasonably have acceptance by men of common understanding." *Hale* v. *State Board*, *supra*. We should reject the construction which the Georgia Supreme Court has placed upon what the Georgia Legislature of 1833 wrote only if we can be confident that the Georgia Legislature of 1833, by the words it used, could not have expressed the meaning thus attributed to it. A fair regard for the place of income taxes, as now commonly conceived, in the thought and practice concerning fiscal matters prevalent in 1833 precludes the rejection of the interpretation by the Georgia Court of the exemption of 1833.

There were, to be sure, so-called "faculty taxes" in Colonial times which had some of the characteristics of our present income taxes in that ability to pay was an ingredient. But even these taxes, hardly income taxes as we now know them, had generally ceased to be, and perhaps even to be remembered. See, *e. g.*, Seligman, The Income Tax (2d ed.) Part II, c. I, pp. 367 *et seq.*;

compare *Hylton* v. *United States*, 3 Dall. 171. In Georgia, the only imposition even remotely classifiable as an income tax because presumably based on ability to pay is that illustrated by a levy of "The sum of four dollars on all professors of law and physic, and the sum of fifty dollars on all billiard tables." Law No. 590, 1797, Watkins Digest of the Laws of Georgia, 1755-1799, pp. 646, 648. Not until the Civil War did Georgia, like the Federal Government, resort to what was indisputably an income tax. On the other hand, to read as the Georgia Supreme Court read the exemption provision of the Charter of 1833, as dealing with a tax on property, fairly reflects a practice, not unknown in the earlier days, of assessing property for tax purposes not by its exchange value but by its earning power. See, *e. g.*, Seligman, The Income Tax (2d ed.) pp. 382–83; Report of Special Commission on Taxation, Connecticut 1887, p. 9, with comments thereon in Kennan, Income Taxation p. 207.

In this setting, it would savor of dogmatism to infuse into the 1833 exemption the income tax atmosphere of our own day. It does not seem inadmissible for the Supreme Court of Georgia to have found that what the Georgia Legislature of 1833 sought was to measure the commonplace property tax of the time not by a flat sum, or on the basis of a value abstractly ascertained, but in accordance with the fruits of the property, modestly limited.

To sanction such a restricted reading of the exemption is to respect a rule deeply rooted in history and policy, according to which contracts of tax exemption are to be read "narrowly and strictly." *Hale* v. *State Board*, *supra*, at 109. To recognize that more than a hundred years ago the Georgia Legislature did not forever bargain away the wholly untapped domain of income taxation is to recognize the governing consideration that "The power of taxation is never to be regarded as surrendered or bar-

gained away if there is room for rational doubt as to the purpose." This was said when an earlier controversy affecting this charter was here. *Wright* v. *Georgia Railroad and Banking Co.*, 216 U. S. 420, 438. As to the astuteness of taxpayers in ordering their affairs so as to minimize taxes we have said that "the very meaning of a line in the law is that you intentionally may go as close to it as you can if you do not pass it." *Superior Oil Co.* v. *Mississippi*, 280 U. S. 390, 395–96. This is so because "nobody owes any public duty to pay more than the law demands: taxes are enforced exactions, not voluntary contributions." Learned Hand, C. J., dissenting in *Commissioner* v. *Newman*, 159 F. 2d 848, 851. Conversely, the State, insofar as it may limit its basic power to tax to enable government to go on, can sail as closely as astuteness permits to the line of an immunity from such exaction. This is an old canon of judicial construction. The policy on which it rests antedates the charter before us, and it forms the setting in which the exemption is to be read. See, *e. g.*, *Charles River Bridge* v. *Warren Bridge*, 7 Pick. (Mass. 1830) 344, affirmed, 11 Pet. 420 (1837). This requirement in the construction of legislative grants, especially tax exemptions, is merely an aspect of respecting legislative purpose. A legislature is not to be presumed to have relinquished its power of taxation beyond the narrowest rational reading of an exemption. The potential need of all governmental powers, and fairness in the distribution of burdens or in the enjoyment of privileges, preclude such an assumption.

We have carefully considered the earlier cases in which the scope of this exemption came before this Court. *Central Railroad and Banking Co.* v. *Georgia*, 92 U. S. 665; *Wright* v. *Georgia Railroad and Banking Co.*, *supra*; *Wright* v. *Central of Georgia R. Co.*, 236 U. S. 674; *Wright* v. *Louisville and Nashville R. Co.*, 236 U. S. 687; *Central of Georgia R. Co.* v. *Wright*, 248 U. S. 525; *Central*,

of Georgia R. Co. v. *Wright*, 250 U. S. 519. It is needless to rehearse the issues they involved. Suffice it to say that the prior taxes found to have been barred by the exemption were all taxes on the railroad property. Now for the first time we are called upon to examine a candid, conventional income tax. Passing reference to "income" when the Court's mind was not focused upon the validity of an income tax as such must not be torn from the context of discussion of property taxes. In any event, these phrases leave untouched our duty to respect the judgment of a State court as to the fair intendment of an exemption.

Judgment affirmed.

MR. JUSTICE RUTLEDGE, agreeing with the Court's conclusions concerning the meaning of the Georgia statute, concurs in the result.